

For preliminary hearing purposes, the Administrative Law Judge found that claimant was entitled to temporary total and medical benefits for an alleged work related accident of March 29, 1993. The respondent and insurance carrier contend the Administrative Law Judge erred when she ordered payment of the medical bills of Dr. Pence as they argue that Dr. Pence's bills should be considered unauthorized because they were unable to have claimant evaluated by another physician before his surgery. The respondent now requests the Appeals Board to review that order.

The issues before the Appeals Board are:

- (1) Whether claimant has met with personal injury by accident arising out of and in the course of his employment;
- (2) Whether the Appeals Board has jurisdiction to review the issues raised by the respondent and insurance carrier pertaining to the Administrative Law Judge's order to pay outstanding medical expenses.

The respondent, in its application for review, indicated that one of the issues for review was whether the Administrative Law Judge lacked jurisdiction in ordering temporary total disability benefits without a physician's off-work slip. At oral argument, respondent's counsel announced that the issue pertaining to temporary total was moot as the claimant has provided a medical statement addressing respondent's concerns.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board, for purposes of preliminary hearing, finds:

- (1) On May 29, 1993, claimant injured his right shoulder when he fell after tripping over product sample cases. The accident occurred while claimant was at work and in the course of his employment with the respondent. There is no hint of evidence that claimant injured his shoulder in any other manner despite respondent's speculation.

Claimant received treatment from authorized orthopedic surgeons, doctors Artz and Eyster. Dr. Artz treated claimant for one month until claimant requested a different physician as he felt that Dr. Artz was too busy to properly consult with him. Claimant next saw Dr. Eyster, who first met with him on April 27, 1993. After a course of conservative treatment, Dr. Eyster released claimant to return to work July 7, 1993, and provided him with an impairment rating at that time. One month later, claimant returned to Dr. Eyster with ongoing shoulder complaints and was given an MRI. Dr. Eyster suggested fusion to the shoulder joint and claimant declined. Dr. Eyster then released claimant with restrictions on September 9, 1993.

Due to continued pain and symptomatology in his right shoulder, in the latter part of September claimant sought treatment from his family physician who prescribed medications and told claimant to contact either orthopedic physician Dr. Poole or Dr. Pence. Due to Dr. Pence's busy schedule, claimant was unable to see him immediately and had to wait until December 17, 1993, for his first visit. Dr. Pence recommended surgery which was accomplished on January 31, 1994. In order to obtain treatment from Dr. Pence, the claimant deliberately failed to tell the doctor that his injury was work related.

Unbeknownst to claimant, approximately four days before his surgery, claimant counsel and respondent counsel agreed that claimant would be evaluated by another physician, Dr. Morris. Claimant did not receive notice of that agreement before his surgery. The evidence indicates the medical care provided claimant relates to the work related accident of May 29, 1993.

- (2) The question has been raised whether the Appeals Board has jurisdiction to review this matter. This proceeding comes before the Appeals Board as a review of a preliminary award entered pursuant to K.S.A. 44-534a. Therefore, the jurisdiction of the Appeals Board is governed by K.S.A. 44-534a and K.S.A. 44-551.

K.S.A. 44-534a(a)(2) pertains to preliminary hearings and provides, in part:

"A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board."

K.S.A. 44-551(b)(2)(A) provides, in part:

"If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing."

Based upon the above statutes, the Appeals Board is empowered to review the finding and order of the Administrative Law Judge pertaining to the issue whether claimant's alleged accidental injury arose out of and in the course of employment. However, the Appeals Board does not have jurisdiction to review the Administrative Law Judge's order pertaining to the payment of medical compensation.

The Administrative Law Judge is specifically empowered by K.S.A. 44-534a to make a preliminary award of medical compensation. As medical compensation is not one of the four issues enumerated in K.S.A. 44-534a(a)(2) as being jurisdictional, and as the Administrative Law Judge has not exceeded her jurisdiction in awarding medical compensation, the Appeals Board cannot review, at this time, the Preliminary Hearing Order of the Administrative Law Judge pertaining to the payment and authorization of Dr. Pence.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that, for preliminary hearing purposes, the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl dated March 8, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of June, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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